

RICHARD E. FORSGREN

IBLA 80-897

Decided May 18, 1981

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring the Snow Bird placer mining claim (AA-37852) abandoned and void.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Richard E. Forsgren, pro se.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Richard E. Forsgren from a July 31, 1980, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring his Snow Bird placer mining claim (AA-37852) abandoned and, therefore, void. The basis for the decision is found in the mining claim recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The Alaska State Office held that since it did not receive appellant's notice of location for the claim, which was located in 1971, until after the statutory deadline of October 22, 1979, the claim must therefore be conclusively deemed abandoned and, thus, void.

The decision recites that appellant's location notice for the claim was received by the Fairbanks District Office of BLM on October 3, 1979. However, jurisdiction to receive filings pertaining to public lands in the State of Alaska is divided between two BLM offices: the Fairbanks District Office and the Alaska State Office in Anchorage. 43 CFR 1821.2-1. Because of the geographic location of appellant's claim within the State of Alaska, the location notice should have been filed in the Alaska State Office of BLM in Anchorage rather than the Fairbanks District Office of BLM. The decision appealed from recites that the location notice was forwarded to Anchorage as soon as it became apparent that the notice had been filed in the wrong office. The location notice was received in the Alaska State Office on December 5, 1979, after the statutory deadline.

Appellant asserts in his statement of reasons for appeal that he received a copy of a notice to mining claim owners which recited the necessity of recording a copy of the location certificate for unpatented claims with BLM by October 22, 1979. The notice, a copy of which appellant attached to his statement of reasons, gave the addresses of both the BLM State Office in Anchorage and the BLM District Office at Fairbanks for the recording of claims. Underneath the addresses was a notation that "complete instructions may be obtained by contacting the above Office." Appellant included with his statement of reasons a copy of a cover note dated December 28, 1978, which was apparently attached to the notice which he received and which stated: "If you need more information please contact the 'USA/BLM \* \*'." The notice received by appellant contained a similar double asterisk beside the address and telephone number of the Fairbanks District Office. Appellant asserts that he was only following instructions when he filed his location notice in Fairbanks. He further contends in his statement of reasons that none of the information which he saw concerning recordation with BLM contained a map indicating the areas of jurisdiction of the two BLM offices.

The owner of an unpatented mining claim located prior to October 21, 1976, must file in "the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location" within 3 years of enactment of the statute (October, 21, 1976). 43 U.S.C. § 1744(b) (1976). This requirement is implemented by the regulation requiring filing of the notice or certificate of location in the "proper BLM Office" by October 22, 1979. 43 CFR 3833.1-2(a). The proper BLM office is defined at 43 CFR 3833.0-5(g) as the office identified in the regulation at 43 CFR 1821.2-1(d) as having jurisdiction over the area in which the claim is located.

The latter regulation identifies the BLM State Office in Anchorage as having jurisdiction over "Southern Alaska" and the Fairbanks District Office as having jurisdiction over "Northern Alaska." 43 CFR 1821.2-1(d). The regulation contains a map on which is drawn the boundary separating the northern district from the southern district.

As a general rule, filing of mining claim recordation documents in the wrong BLM office before the statutory deadline does not constitute compliance with the statutory provisions where the documents are not received by the proper BLM office until after the deadline. Roy Tremayne, 47 IBLA 289 (1980); Santa Fe Nuclear, Inc., 47 IBLA 220 (1980); Floyd Zaiger, 47 IBLA 204 (1980); John Sloan, 47 IBLA 146 (1980); John S. Henson, 47 IBLA 129 (1980); C. F. Linn, 45 IBLA 156 (1980). Thus, this Board has held that the filing of a notice of location in a District Office of BLM in California does not constitute compliance with the recordation requirements even though that filing was made before the statutory deadline since the proper office was designated by regulation at 43 CFR 1821.2-1(d) as the BLM State Office and the documents forwarded by the District Office were not received by the proper office until after the statutory deadline where BLM forwarded the documents promptly and even immediate forwarding would not have met the deadline. C. F. Linn, *supra*. Although in this case appellant's notice of location was filed sufficiently in advance of the deadline to permit forwarding, this distinction is rendered moot by appellant's failure to file evidence of assessment work prior to October 22, 1979.

[1] Notwithstanding appellant's filing of the notice of location, the case record discloses that evidence of assessment work for the subject claim was not transmitted by appellant until November of 1979 and was not filed with BLM until December of 1979. The proof of annual labor for the assessment year ending September 1, 1979, was date stamped as received by the BLM District Office on December 6, 1979, and the Anchorage State Office on December 7, 1979. It is well settled that where the owner of an unpatented mining claim located prior to October 21, 1976, fails to file evidence of assessment work or a notice of intention to hold the claim with BLM by October 22, 1979, the claim is conclusively deemed to be abandoned and, thus, void. 43 U.S.C. § 1744(a), (c) (1976); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980). Accordingly, the decision appealed from must be affirmed on this ground.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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C. Randall Grant, Jr.  
Acting Administrative Judge

I concur:

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Edward W. Stuebing  
Administrative Judge

## ADMINISTRATIVE JUDGE BURSKI CONCURRING IN THE RESULT:

I concur in the majority decision only to the extent that it declares the Snowbird placer mining claim abandoned and void for failure to file proof of assessment work on or before October 22, 1979. I wish, however, to clearly state my opinion that it was error for the Alaska State Office to reject the filing of the notice of location of this claim on the ground that it was filed in the wrong BLM Office. I think that, inasmuch as there are two possible BLM offices for the proper filing of documents, filings within the State of Alaska are sui generis, and the question whether a claim has been filed in the proper office requires special analysis by this Board.

The mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), require the filing of a copy of the notice or certificate of location "in the office of the Bureau designated by the Secretary." The implementing regulation, 43 CFR 3833.0-5(g), defines "proper BLM office" as "the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located." When one turns to 43 CFR 1821.2-1(d), one is informed that the Alaska State Office in Anchorage is responsible for southern Alaska, while the Fairbanks District Office has jurisdiction over northern Alaska. Recognizing that these terms are not necessarily self-defining, a diagram of Alaska with a dividing line is cross-referenced. While this diagram clearly shows that a claim located in the Kenai peninsula should be filed in Anchorage, and one outside of Point Barrow should be recorded in Fairbanks, the small scale of the map makes it virtually impossible for anyone to tell the proper office for filing claims which are within 100 miles of the dividing line. Indeed, the map does not even indicate the scale to which it is drawn.

As we have had innumerable occasions to note, everyone is deemed to have constructive knowledge of the laws and applicable regulations. In the instant case, however, the statute only requires that the filing be made in the proper BLM office, while the regulation leaves the question of the proper office in Alaska for the filing of documents to considerable dispute. At least insofar as initial filings are concerned, I think it would be manifest injustice to ascribe constructive knowledge of the proper office for the recording of mining claims to every person filing in Alaska, particularly where there is simply no way in which many claimants could be sure merely by reading the regulations that they were filing in the correct office. If the Alaska State Office desires to bind claimants to filing in the correct offices, I suggest it adopt a regulation which contains a full and complete description of the land under the jurisdiction of the two respective offices in Alaska.

Thus, I do not believe that the fact that the notices of location were received in Fairbanks in sufficient time to transmit them to Anchorage is particularly relevant. I would hold that, considering the inherent ambiguity of the regulations as they apply to Alaska, the notice of location was filed in the proper office. See generally A. M. Shaffer, 73 I.D. 293 (1966).

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James L. Burski  
Administrative Judge

